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| 10/604,046 | 06/24/2003 | James H. Wright | WRIGP001US | 1045 |

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| EXAMINER |
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JOYNER, KEVIN

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1797

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10/31/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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| Office Action Summary | Application No. 10/604,046 | Applicant(s) WRIGHT, JAMES H. | |
| | Examiner Kevin C. Joyner | Art Unit 1797 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-60 is/are pending in the application.
- 4a) Of the above claim(s) 17-22 and 30-60 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16, 21, and 23-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Adjeleian (U.S. Patent No. 6,596,374).

Adjeleian discloses an anti-splash, anti-spill fluid-holding apparatus, comprising: an inner side surface comprising an inner mid section diameter thereof continuing inwardly to an inner upper section diameter thereof which is smaller than said inner mid section diameter, from more than side cross sections; an outer side surface comprising an outer mid section diameter thereof continuing to an outer lower section diameter thereof which is larger than said outer mid section diameter, from more than two side cross sections; said outer side surface further comprising an outer diameter thereof which, between said outer lower section diameter and an outer upper section diameter thereof, substantially never increases when moving from any lower circumference thereof to any higher circumference thereof, from more than two side cross-sections; an inward angle comprising a less than 90 degree angle tangential to any point along said inner side surface from said inner mid section diameter to said inner upper section diameter, from more than two side cross-sections; an open top circumscribed by said

Art Unit: 1797

inner upper section diameter; and a base circumscribed by said outer lower section diameter as disclosed in Figures 3 and 5.

Regarding claim 7, the reference continues to disclose omitting any anti-splash element comprising an inward angle greater than or equal to 90 degrees tangentially at any point between said inner mid section diameter and said inner upper section diameter as shown in Figures 3 and 5. Concerning claim 8 the reference also discloses that said inward angle continuously increases at all points along said inner side surface from said inner mid section diameter to said inner upper section diameter as shown in Figure 5. More specifically, the inner upper section diameter is the neck portion of the container and the mid section is the main body of the container as shown in Figure 5. Therefore, said inward angle continuously increases at all points along said inner side surface from said inner mid section diameter to said inner upper section diameter.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-16, 21, 23-24, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dodge (WO 200041945 A) in view of Adjeleian (U.S. Patent No. 6,596,374).

Dodge discloses an anti-splash, anti-spill fluid-holding apparatus, comprising: an inner side surface comprising an inner mid section diameter thereof continuing inwardly to an inner upper section diameter thereof which is smaller than said inner mid section diameter, from more than side cross sections; an outer side surface comprising an outer mid section diameter thereof continuing to an outer lower section diameter thereof, from more than two side cross sections; said outer side surface further comprising an outer diameter thereof which, between said outer lower section diameter and an outer upper section diameter thereof, substantially never increases when moving from any lower circumference thereof to any higher circumference thereof, from more than two side cross-sections; an inward angle comprising a less than 90 degree angle tangential to any point along said inner side surface from said inner mid section diameter to said inner upper section diameter, from more than two side cross-sections; an open top circumscribed by said inner upper section diameter; and a base circumscribed by said outer lower section diameter as disclosed on pages 6-8 and shown in Figures 1 and 2. Dodge does not appear to disclose that the outer lower section diameter thereof is larger than said outer mid section diameter. Adjeleian is relied upon as set forth in paragraph 2 above, wherein Adjeleian discloses an anti-splash, anti-spill fluid-holding apparatus that comprises an outer lower section diameter thereof that is larger than said outer mid section diameter (Figures 3-6) in order to increase stability and prevent the apparatus from tipping over and spilling (column 3, line 1). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Dodge to comprise the outer lower section diameter thereof larger than

Art Unit: 1797

said outer mid section diameter in order to increase stability and prevent the apparatus from tipping over and spilling as exemplified by Adjeleian.

Regarding claim 7, the Dodge continues to disclose omitting any anti-splash element comprising an inward angle greater than or equal to 90 degrees tangentially at any point between said inner mid section diameter and said inner upper section diameter as shown in Figures 1 and 2. Concerning claim 8, the reference also discloses that said inward angle continuously increases at all points along said inner side surface from said inner mid section diameter to said inner upper section diameter as shown in Figure 1. More specifically, the inner upper section diameter is the neck portion of the container and the mid section is the main body of the container as shown in Figure 1. Therefore, said inward angle continuously increases at all points along said inner side surface from said inner mid section diameter to said inner upper section diameter. Regarding claim 11, the apparatus of Dodge comprises said inner side surface, said outer side surface, said points along said inner side surface forming said inward angle, and said base comprising a single, unitary article of fabrication as shown in Figure 1. More specifically, the bottom of the container is a base.

Claims 2-6 further requires that the inward angle comprising a no more than approximately 15 degree angle tangential to any point from said inner mid section diameter to said inner upper section diameter. It would have been well within the purview of one of ordinary skill in the art to optimize the angle tangential to any point from said inner mid section diameter to said inner upper section diameter to no more

Art Unit: 1797

than 15 degrees in order to maximize the efficiency of the anti-splash, anti-spill in the apparatus. Only the expected results would be attained.

Claims 9 and 10 further requires that the inner section ratio be approximately 1 to 0.875 between said inner mid section diameter and said inner upper section diameter. It would have been well within the purview of one of ordinary skill in the art to optimize the ratio between the inner mid section diameter and the inner upper section diameter in order to maximize the efficiency of the anti-spill, anti-splash apparatus. Only the expected results would be attained.

Claims 12 and 13 further requires that the fluid holding volume is approximately 37.5 cubic centimeters. It would have been well within the purview of one of ordinary skill in the art to optimize the fluid holding volume in order to maximize the appropriate amount of fluid needed for the usage of the apparatus. Only the expected results would be attained.

Claims 14-16 further requires that the inner side surface height be approximately 3 centimeters and the inner mid section diameter by approximately 4 centimeters. It would have been well within the purview of one of ordinary skill in the art to optimize inner surface height and inner mid section diameter in order to maximize the efficiency of the anti-spill, anti-splash apparatus. Only the expected results would be attained.

Claim 21 further requires that the outward angle comprise an approximately 30 degree angle tangential to at least one point from said outer mid section diameter to said outer lower section diameter. It would have been well within the purview of one of ordinary skill in the art to optimize the angle between the outer mid section diameter and

the outer lower section diameter in order to maximize the stability of the anti-spill, anti-splash fluid holding apparatus. Only the expected results would be attained.

Claims 23 and 24 further requires that the outer mid section diameter and the outer lower section diameter be at a ratio of approximately 1 to 1.33. It would have been well within the purview of one of ordinary skill in the art to optimize the ratio between the outer mid section diameter and the outer lower section diameter in order to maximize the stability of the anti-splash, anti-spill fluid holding apparatus. Only the expected results would be attained.

Concerning claim 27, Dodge discloses that the inner side surface, the outer side surface, said points along said inner side surface forming said inward angle, and said base comprises a single unitary article of fabrication as described above concerning claim 11. Dodge does not appear to disclose the fluid holding volume or the angle between the inner mid section diameter to the inner upper section diameter. However, it would have been well within the purview of one of ordinary skill in the art to optimize fluid holding volume and the angle between the inner mid section diameter to the inner upper section diameter in order to maximize the efficiency and the appropriate amount of fluid needed for the usage of the fluid holding apparatus. Only the expected results would be attained.

Concerning claims 25 and 28, Dodge also discloses that the apparatus is at a sterile state suitable for utilization in surgical procedures on page 1, lines 5-10. More specifically the apparatus is utilized to hold solutions such as cleaning agents and medicines. The cleaning agent provides the apparatus in a sterile state and is fully

Art Unit: 1797

capable of being utilized during a surgical procedure, and medicines are always provided in a sterile container in order to prevent contamination of the medicine wherein the medicine is capable of being used in a surgical procedure.

5. Claims 26 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dodge (WO 200041945) in view of Adjeleian (U.S. Patent No. 6,596,374) as applied to claims 1 and 28 above, and further in view of Paikoff et al. (U.S. Patent No. 4,523,679).

Dodge in view of Adjeleian is relied upon as set forth in reference to claims 1 and 28 above. Dodge in view of Adjeleian does not appear to disclose that the apparatus is in combination with a surgical kit comprising said fluid holding apparatus; and at least one item of surgical equipment other than said fluid holding apparatus. However such fluid holding apparatuses are commonly known to one of ordinary skill in the art of sterilization to be combined with surgical kits. Paikoff discloses a surgical kit with a fluid holding apparatus (26) and at least one item of surgical equipment (20) other than said fluid holding apparatus in the surgical kit as shown in Figure 1B (column 4, lines 20-25 and 40-50). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to utilize the fluid holding apparatus of Dodge in view of Adjeleian in a surgical kit, as such fluid holding apparatuses are known to be combined with surgical kits as exemplified by Paikoff.

Response to Arguments

6. Applicant's arguments with respect to claims 1-16, 21 and 23-29 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin C. Joyner whose telephone number is (571) 272-2709. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on (571) 272-1214. The fax phone

Art Unit: 1797

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KCJ



GLADYS JP CORCORAN
SUPERVISORY PATENT EXAMINER